

**SALES AND USE TAX REVIEW COMMISSION
RECOMMENDATION PURSUANT TO P.L. 1999, C. 416**

BILL NUMBER:
S-329

DATE OF INTRODUCTION:
January 8, 2002

SPONSOR:
Senator Bark
Senator Allen

DATE OF RECOMMENDATION:
March 26, 2002

IDENTICAL BILL:

COMMITTEE:
Senate Economic Growth, Agriculture and Tourism

DESCRIPTION:

This bill would allow certified vendors in historic districts to charge 3% sales tax.

Vendors having a place of business within designated "urban heritage districts" would be eligible to charge sales tax at one-half the normal rate on retail sales made from their urban heritage district location (except sales of motor vehicles, cigarettes, alcoholic beverages, and manufacturing machinery, and except when the business is located in an area that overlaps with an urban enterprise zone.) The Division of Taxation would be required to certify those vendors eligible to charge the reduced sales tax rate as urban heritage district vendors.

ANALYSIS:

This bill would result in many of the same undesirable conditions already caused by the urban enterprise zone reduced sales tax rate benefit program. Even assuming that the reduced sales tax rate benefit might attract new business to the urban heritage districts favored under the terms of the bill, the piecemeal creation of such specially favored districts will simply shift economic growth from one neighborhood to another; if an "urban heritage district" does experience an increase in healthy economic activity, its good fortune would be at the expense of neighboring districts, which arguably, would be placed at a competitive disadvantage in attracting new vendors or customers willing to engage in transactions at the full 6% rate.

A special reduced sales tax rate for sales within certain portions of New Jersey will also create a potential legal problem, if the full compensating use tax rate is applied when taxable tangible personal property purchased out-of-state or from non-New Jersey mail order vendors is "used" in an urban heritage district. By the terms of the bill, the one-half

reduced sales tax rate would apply only to sales made from a certified vendor at its place of business in an urban heritage district. But giving full effect to this physical-location requirement could result in a violation of the Commerce Clause of the United States Constitution. The state cannot lawfully subject a sale of merchandise taking place within New Jersey to only 3% sales tax, while imposing a use tax rate of 6% on a comparable item that was purchased from an out-of-New Jersey source.

In light of the case **Associated Industries of Missouri v. Lohman**, 511 U.S. 641, 114 S. Ct. 1815, 128 L. Ed. 2d 639 (1994), it appears that New Jersey statutes creating a partial exemption for certain retail sales only if they take place within a certain district (i.e. only intrastate sales) would similarly not survive constitution scrutiny. In order to avoid constitutional challenges, New Jersey has had to apply the reduced (3%) rate administratively both to sales actually taking place in UEZ and satisfying the other statutory criteria for the partial exemption and to any out-of-state purchases, when the first use of the goods takes place in a UEZ. If this bill is enacted, it will need to do the same thing for use tax in the urban heritage districts. Only in that way could the partial exemption not discriminate against interstate commerce, since both sales tax and use tax would be 3%. But, while this solution would at least probably shield the State from constitutional attacks, it would result in substantial losses in tax revenue and would fail to advance the purpose for which the urban heritage district partial exemption is intended.

To date, there has been no comprehensive analysis done of the UEZ program to measure the impact of the program on the State. Without any concrete evidence to show that the UEZ program's effectiveness within the urban areas was as anticipated, it seems irresponsible to continue to push for more legislation projected to increase business activity and stimulate economic growth in certain areas within the State. The proposed bill basically appears to be a modified UEZ program disguised to look like a different agenda by the presentation of varied criteria. There is no justification for reintroducing such initiatives without knowing that the initial objectives of the UEZ program as originally implemented were attained, and met the expectations of the program's supporters.

There is no demonstrated need for this legislation. In fact, this bill could act as a deterrent to the designation or continuation of historic districts. Businesses located outside of an existing or proposed district could be threatened enough by the district's reduced sales tax that opponents would lobby against having a historic district at all. In

addition, it is not realistic to think that discounts provided through reduced sales tax rates on souvenirs would stimulate economic activity or enable an historic district to prosper significantly.

RECOMMENDATION:

The Commission does not recommend enactment of this bill.

COMMISSION MEMBERS FOR PROPOSAL: 0

COMMISSION MEMBERS AGAINST PROPOSAL: 6

COMMISSION MEMBERS ABSTAINING: 0

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